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RECIPIENT	COMPANY	FAX NO.	PHONE NO.
Examiner Rosa Holland	U.S. Patent & Trademark Office	703.872.9306	

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• MESSAGE •

Examiner Holland,

Thank you for your time today. Following up our conversation, we have attached the Notice of Non-Compliant Amendment, Amendment filed with the PTO on October 7, 2003, along with the acknowledgment postcard. As can be seen, we have not cancelled claims 38-56 in Application No. 09/965,426. Thus, the Notice of Non-Compliant Amendment should be withdrawn, because it appears to have been based on an inaccurate scanning of the Amendment filed with the PTO on October 7, 2003. If you have any questions, please call me at the above telephone number.

John C. Gatz

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47097-01106USC1

Total Pages (+ Cover): 30

NOV 15 2004



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,426	09/27/2001	Marcus C. Merriman	47097-01106USC1	4436

 30223 7590 11/03/2004
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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

 DOCKETED
 INIT. PB DATE: 11/10/04
 ACTION: Resp. DATE: 12/3/04
huc



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09/965426
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Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 10/15/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings: _____
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☐ E. Other: Claims 1-56 were canceled in amendment filed 10/24/05. (Claims 1-86 are canceled)

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 4132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(e)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

John M. Hollister
 Legal Instruments Examiner (LIE)

571-272-149
 Telephone No.

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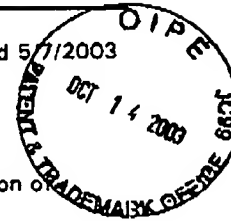
OCT 22 2003

JENKENS & GILCHRIST

Mailed: October 7, 2003 GATZ/adw
Re: Applicant(s): Gary R. DelDuca, et al.
Serial No. 09/965,426, filed September 27, 2001
(Continuation of Application Serial No.: 09/915,150, 7/25/01)
For: Modified Atmosphere Packages And Methods
For Making The Same
Docket No.: 47097-01106USC1-

The following documents were received in the PTO on the date
stamped below:

- 1) Amendment Transmittal
- 2) Amendment & Response to Office Action dated 5/7/2003
- 3) Petition for Two Month Extension of Time
- 4) Third Information Disclosure Statement
- 5) PTO Form 1449 (1 page)
- 6) Copies of Cited References
- 7) Check in the amount of \$2,240.00 for extension of
time/additional claim fees
- 8) Check in the amount of \$180.00 for IDS fee
- 9) Acknowledgment Postcard



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RH 10-22-03

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